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Attorneys for Plaintiff and all others similarly situated

**THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

KAREN ELAINE, on behalf of
herself and all others similarly
situated,

Plaintiff,

vs.

FIT AND FUN FITNESS
TRANSFORMATION ACADEMY,
LLC; and DOES 1 through 20,
inclusive, and each of them,

Defendants.

Case No.

CLASS ACTION

**COMPLAINT FOR VIOLATIONS
OF:**

- (1) Violations of the Telephone
Consumer Protection Act, 47
U.S.C. § 227, *et seq.*
- (2) Willful Violations of the
Telephone Consumer Protection
Act, 47 U.S.C. § 227, *et seq.*

DEMAND FOR JURY TRIAL

Plaintiff Karen Elaine (“Plaintiff”), on behalf of herself and all others
similarly situated, alleges the following upon information and belief based upon
personal knowledge:

NATURE OF THE CASE

1. Plaintiff brings this action for herself and others similarly situated
seeking damages and any other available legal or equitable remedies resulting

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1 from the illegal actions of defendant Fit and Fun Fitness Transformation
 2 Academy, LLC, et al. (“Defendant” or “Fit and Fun Fitness”) and DOES 1
 3 through 20, in negligently knowingly, and/or willfully contacting Plaintiff on
 4 Plaintiff’s cellular telephone in violation of the Telephone Consumer Protection
 5 Act, 47 U.S.C. § 227, *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy.

6 **JURISDICTION & VENUE**

7 2. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because
 8 Plaintiff, a resident of California, seeks relief on behalf of a Class, which will
 9 result in at least one class member belonging to a different state than that of
 10 Defendant, a company with its principal place of business at 8885 Venice
 11 Boulevard, Suite 203, Los Angeles, California 90034. Plaintiff also seeks up to
 12 \$1,500.00 in damages for each unsolicited text message in violation of the
 13 TCPA, which, when aggregated among a proposed class in the thousands,
 14 exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore,
 15 both diversity jurisdiction and the damages threshold under the Class Action
 16 Fairness Act of 2005 (“CAFA”) are present, and this Court has jurisdiction.

17 3. Venue is proper in the United States District Court for the Central
 18 District of California pursuant to 18 U.S.C. §§ 1391(b) and 144(a) because
 19 Defendant does business within the State of California and the County of Los
 20 Angeles.

21 **PARTIES**

22 4. Plaintiff, Karen Elaine (“Plaintiff”), is a natural person residing in
 23 Venice, California.

24 5. Defendant Fit and Fun Fitness Transformation Academy, LLC
 25 (“Defendant” or “Fit and Fun Fitness”) is a California corporation with its
 26 principal place of business at 8885 Venice Boulevard, Suite 203, Los Angeles,
 27 California 90034. Plaintiff is informed and believes that Fit and Fun Fitness
 28 conducted and conducts business in Los Angeles County. Fit and Fun Fitness is

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1 qualified to and doing business in the State of California, and may be served in
 2 this State through its registered agent: Legal Zoom at 101 North Brand
 3 Boulevard, Floor 11, Glendale, California 91203.

4 6. The above named Defendant, and its subsidiaries and agents, are
 5 collectively referred to as “Defendants.” The true names and capacities of the
 6 Defendants sued herein as DOES 1 through 20, inclusive, are currently unknown
 7 to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the
 8 Defendants designated herein as a DOE is legally responsible for the unlawful
 9 acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to
 10 reflect the true names and capacities of the DOE Defendants when such identities
 11 become known.

12 7. Plaintiff is informed and believes and thereon alleges that at all
 13 relevant times, each and every Defendant was acting as an agent and/or
 14 employee of each of the other Defendants and was the owner, agent, servant,
 15 joint venturer and employee, each of the other and each was acting within the
 16 course and scope of its ownership, agency, service, joint venture and
 17 employment with the full knowledge and consent of each of the other
 18 Defendants. Plaintiff is informed and believes and thereon alleges that each of
 19 the acts and/or omissions complained of herein was made known to, and ratified
 20 by, each of the other Defendants.

21 8. At all times mentioned herein, each and every Defendant was the
 22 successor of the other and each assumes the responsibility for each other’s acts
 23 and omissions.

24 **FACTUAL ALLEGATIONS**

25 9. Beginning on or around the afternoon of August 25, 2015,
 26 Defendant contacted Plaintiff on her cellular telephone at (310) 490-****, in an
 27 attempt to communicate with Plaintiff regarding fitness services. The original
 28 unsolicited text messages came from what are believed to be internet generated

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1 spoof numbers starting with the area code prefix (971), (929), (281), (678),
 2 (510), (267), (213), (719), (432), (602), (206), (281) and (702). Defendant is
 3 known to use the numbers (971) 231-5866, (929) 299-7749, (929) 299-7002,
 4 (929) 299-7301, (281) 393-7847, (678) 203-0465, (510) 473-8538, (510) 671-
 5 1135, (267) 219-5063, (213) 293-2134, (719) 203-2477, (432) 201-4845, (602)
 6 212-1096, (206) 745-9966, (281) 393-7847, and (702) 381-1455.

7 10. Defendant used an “automated telephone text messaging system,” as
 8 defined by 47 U.S.C. § 227(a)(1) to place its unsolicited text messages to
 9 Plaintiff seeking to communicate with Plaintiff regarding services from “Fit and
 10 Fun Fitness Transformation Academy”

11 11. Defendant’s unsolicited text message(s) constituted message that
 12 were not for emergency purposes as defined by 47 U.S.C. § 227(b)(1)(A).

13 12. Defendant’s unsolicited text message(s) were placed to telephone
 14 numbers assigned to a cellular telephone service for which Plaintiff incurs a
 15 charge for incoming unsolicited text messages pursuant to 47 U.S.C. § 227(b)(1).

16 13. Defendant never received Plaintiff’s “prior express consent” to
 17 receive unsolicited text messages using an automated dialing system or an
 18 artificial or prerecorded message on her cellular telephone pursuant to 47 U.S.C.
 19 § 227(b)(1)(A).

20 **CLASS ALLEGATIONS**

21 14. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules
 22 of Civil Procedure and/or other applicable law, on behalf of herself and all others
 23 similarly situated, as a member of the proposed class (hereafter "the Class")
 24 defined as follows:

25 All persons within the United States who received any
 26 unsolicited text messages from Defendant to said person’s
 27 cellular telephone made through the use of any automatic
 28 telephone dialing system or an artificial or prerecorded

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1 unsolicited text message and such person had not previously
 2 provided express consent to receive such unsolicited text
 3 messages within the four years prior to the filing of this
 4 Complaint

5 15. Plaintiff represents, and is a member of the Class, consisting of All
 6 persons within the United States who received any unsolicited text message from
 7 Defendant to said person's cellular telephone made through the use of any
 8 automatic telephone dialing system or an artificial or prerecorded unsolicited text
 9 message and such person had not previously not provided their cellular telephone
 10 number to Defendant within the four years prior to the filing of this Complaint.

11 16. Excluded from the Class are governmental entities, Defendants, any
 12 entity in which Defendants have a controlling interest, and Defendants' officers,
 13 directors, affiliates, legal representatives, employees, co-conspirators, successors,
 14 subsidiaries, and assigns. Also excluded from the Class are any judges, justices
 15 or judicial officers presiding over this matter and the members of their immediate
 16 families and judicial staff.

17 17. This action is properly maintainable as a class action. This action
 18 satisfies the numerosity, typicality, adequacy, predominance and superiority
 19 requirements for a class action.

20 18. **Numerosity:** The proposed Class is so numerous that individual
 21 joinder of all members is impracticable. Due to the nature of the trade and
 22 commerce involved, Plaintiff does not know the number of members in the
 23 Class, but believes the Class members number in the thousands, if not more.
 24 Plaintiff alleges that the Class may be ascertained by the records maintained by
 25 Defendants.

26 19. Plaintiff and members of the Class were harmed by the acts of
 27 Defendant(s) in at least the following ways: Defendant(s) illegally contacted
 28 Plaintiff and Class members via their cellular telephones thereby causing

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1 Plaintiff and Class members, without their “prior express consent,” to incur
 2 certain charges or reduced telephone time for which Plaintiff and Class members
 3 had previously paid by having to retrieve or administer message(s) left by
 4 Defendant during those illegal calls, and invading the privacy of said Plaintiff
 5 and Class members.

6 20. **Common Questions of Law and Fact Predominate:** There are
 7 only a few legal and factual issues to determine if there is liability under the
 8 TCPA and for each of those questions of law and fact, common issues to the
 9 Class predominate over any questions that may affect individual Class members,
 10 in that the claims of all Class members for each of the claims herein can be
 11 established with common proof. Common questions of fact and law include, but
 12 are not limited to, the following:

- 13 (a) Whether, within the four years prior to the filing of this
 14 Complaint, Defendant(s) made any unsolicited text messages
 15 (other than a text message made for emergency purposes or made
 16 with the prior express consent of the messaged party) to a Class
 17 member using any automated dialing system or an artificial or
 18 prerecorded unsolicited text message to any telephone number
 19 assigned to a cellular telephone service;
- 20 (b) Whether Plaintiff and the Class members were damaged thereby,
 21 and the extent of the statutory damages for each such violation;
 22 and
- 23 (c) Whether the Defendant(s) should be enjoined from engaging in
 24 such conduct in the future.

25 21. **Typicality:** Plaintiff’s claims are typical of the claims of members
 26 of the Class, as Plaintiff was subject to the same common course of conduct by
 27 Defendant(s) as all Class members. The injuries to each member of the Class
 28 were caused directly by Defendant(s)’ wrongful conduct as alleged herein.

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1 22. **Adequacy of Representation:** Plaintiff will fairly and adequately
2 represent and protect the interests of the Class. Plaintiff has retained counsel
3 with substantial experience in handling complex class action litigation. Plaintiff
4 and her counsel are committed to prosecuting this action vigorously on behalf of
5 the Class and have financial resources to do so.

6 23. **Superiority of Class Action:** A class action is superior to other
7 available methods for the fair and efficient adjudication of the present
8 controversy. Class members have little interest in individually controlling the
9 prosecution of separate actions because the individual damage claims of each
10 Class member are not substantial enough to warrant individual filings. In sum,
11 for many, if not most, Class members, a class action is the only feasible
12 mechanism that will allow them an opportunity for legal redress and justice.
13 Plaintiff is unaware of any litigation concerning the present controversy already
14 commenced by members of the Class. The conduct of this action as a class
15 action in this forum, with respect to some or all of the issues presented herein,
16 presents fewer management difficulties, conserves the resources of the parties
17 and of the court system, and protects the rights of each Class member.

18 24. Moreover, individualized litigation would also present the potential
19 for varying, inconsistent, or incompatible standards of conduct for Defendants,
20 and would magnify the delay and expense to all parties and to the court system
21 resulting from multiple trials of the same factual issues. The adjudication of
22 individual Class members' claims would also, as a practical matter, be
23 dispositive of the interests of other members not parties to the adjudication, and
24 could substantially impair or impede the ability of other Class members to
25 protect their interests.

26 25. Plaintiff and the members of the Class have suffered and will
27 continue to suffer harm as a result of Defendant(s)' unlawful and wrongful
28 conduct. Defendant(s) have acted, or refused to act, in respects generally

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1 applicable to the Class, thereby making appropriate final and injunctive relief
 2 with regard to the members of the Class as a whole.

3 **FIRST CAUSE OF ACTION**

4 **(VIOLATION OF THE TELEPHONE CONSUMER PROTECTION ACT,**
 5 **47 U.S.C. *ET SEQ.*)**

6 **(Against All Defendants)**

7 26. Plaintiff hereby incorporates by reference and re-alleges each and
 8 every allegation set forth in each and every preceding paragraph of this
 9 Complaint, as though fully set forth herein.

10 27. The foregoing acts and omission of Defendants constitute numerous
 11 and multiple violations of the TCPA, including but not limited to each and every
 12 one of the above cited provisions of 47 U.S.C. § 227, *et seq.*

13 28. As a result of Defendants violations of 47 U.S.C. § 227, *et seq.*,
 14 Plaintiff and the Class Members are entitled to an award of \$500.00 in statutory
 15 damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

16 29. Plaintiff and the Class members are also entitled to and seek
 17 injunctive relief prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **(KNOWING AND/OR WILLFUL VIOLATION OF**
 20 **THE TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. *ET SEQ.*)**

21 **(Against All Defendants)**

22 30. Plaintiff hereby incorporates by reference and re-alleges each and
 23 every allegation set forth in each and every preceding paragraph of this
 24 Complaint, as though fully set forth herein.

25 31. The foregoing acts and omissions of Defendants constitute
 26 numerous and multiple knowing and/or willful violations of the TCPA, including
 27 but not limited to each and every one of the above cited provisions of 47 U.S.C.
 28 § 227, *et seq.*

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32. As a result of Defendant(s)' violations of 47 U.S.C. § 227, *et seq.*, Plaintiff and the Class Members are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

33. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for relief and judgment as follows:

1. An order certifying this action as a class action and appointing Plaintiff and her counsel to represent the Class;
2. For the first cause of action:
 - Plaintiff and Class members are entitled to and request \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227, *et seq.*;
 - Preliminary and permanent injunctive relief enjoining Defendant(s), their agents, servants and employees, and all persons acting in concert with them, from engaging in, and continuing to engage in, the unlawful calls made with automated dialing systems to cellular phones without prior express consent;
 - Attorneys' fees, costs and any and all other relief that the Court deems just and proper.
3. For the second cause of action:
 - Plaintiff and Class members are entitled to and request \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227, *et seq.*;
 - Preliminary and permanent injunctive relief enjoining Defendant(s), their agents, servants and employees, and all

1 persons acting in concert with them, from engaging in, and
2 continuing to engage in, the unlawful calls made with automated
3 dialing systems to cellular phones without prior express consent;
4 • Attorneys' fees, costs and any and all other relief that the Court
5 deems just and proper.

6
7 Dated: September 30, 2015

Respectfully submitted,

8 By: /s/ John P. Kristensen

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury for all such triable claims.

By: /s/ John P. Kristensen

CLASS ACTION COMPLAINT